

NONREGULATORY GUIDANCE

34 CFR PART 76, SUBPART H

HOW DOES A STATE OR LOCAL EDUCATIONAL AGENCY ALLOCATE FUNDS TO CHARTER SCHOOLS THAT ARE OPENING FOR THE FIRST TIME OR SIGNIFICANTLY EXPANDING THEIR ENROLLMENT?



Section 10306
of the
Elementary and Secondary Education Act of 1965
as amended by the
Charter School Expansion Act of 1998
Public Law No. 105-278

UNITED STATES DEPARTMENT OF EDUCATION
Office of Elementary and Secondary Education

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ALLOCATION OF FUNDS TO NEW AND EXPANDING CHARTER SCHOOLS

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LIST OF ACRONYMS

CFR -- Code of Federal Regulations

CSRD -- Comprehensive School Reform Demonstration Grant

ED -- United States Department of Education

ESA -- educational service agency

ESEA -- Elementary and Secondary Education Act of 1965

FAPE -- free appropriate public education

FY -- fiscal year

IDEA -- Individuals with Disabilities Education Act

LEA -- local educational agency

PCSP -- Public Charter Schools Program

Q&A -- Question and Answer

SEA -- state educational agency

SY -- school year

TLCF -- Technology Literacy Challenge Fund

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I. BACKGROUND

The United States Department of Education's (Department or ED) Public Charter Schools Program (PCSP) provides support for the planning, program design, and initial implementation of charter schools; the evaluation of the effects of charter schools; and the dissemination of information about charter schools and successful practices in charter schools. The PCSP was originally authorized in October 1994, under Title X, Part C of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. 8061-8067. Congress reauthorized the program in October 1998 by enacting the Charter School Expansion Act of 1998, Public Law No. 105-278. As amended, section 10306 of the ESEA requires the Secretary and State educational agencies (SEAs) to take measures to ensure that charter schools receive the Federal-to-State formula funds¹ for which they are eligible within five months of opening or expanding their enrollment. This is required "notwithstanding the fact that the identity and characteristics of the students enrolling at that charter school are not fully determined until that charter school actually opens." See 20 U.S.C. 8065a(a).

On December 22, 1999, the Secretary published in the Federal Register (64 Fed. Reg. 71,964) final regulations implementing section 10306 of the ESEA (hereinafter referred to as "final regulations"). The final regulations set forth general requirements that States and local school districts must meet in order to ensure that charter schools opening for the first time or significantly expanding their enrollment receive the Federal-to-State formula funds for which they are eligible. This nonregulatory guidance addresses the implementation issues that have arisen under the various programs to which section 10306 of the ESEA and the final regulations apply. It does not impose requirements beyond those in the ESEA and other applicable Federal statutes and regulations. Although this guidance is non-binding, compliance with the guidance will be deemed by Department officials, including the Inspector General, as compliance with the applicable statutes and regulations.

II. SUMMARY OF FINAL REGULATIONS

The final regulations implementing section 10306 of the ESEA amended Part 76 (State-Administered Programs) of the Education Department General Administrative Regulations (EDGAR) by redesignating Subpart H as Subpart I, and adding a new Subpart H. The regulations ensure that charter schools opening for the first time or significantly expanding their enrollment will receive the funds for which they are eligible under all Department programs in which the Secretary allocates funds to States on a formula basis. Some of the major provisions in the final regulations include the following:

¹ The term *Federal-to-State formula funds* refers to ED programs under which the Secretary allocates funds to States on a formula basis.

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- For covered programs in which States and local educational agencies (LEAs) allocate funds by formula, a requirement that States and LEAs implement procedures that ensure that each charter school opening for the first time or significantly expanding its enrollment on or before November 1 of an academic year receives the proportionate amount of funds for which it is eligible within five months of the date the charter school opens or significantly expands its enrollment;
- For each charter school opening or significantly expanding its enrollment after November 1 but before February 1 of an academic year, a requirement that States and LEAs implement procedures that ensure that the charter school receives at least a *pro rata* portion of the proportionate amount of funds for which the charter school is eligible on or before the date the State or LEA allocates funds to other LEAs and public schools for the succeeding year;
- For each charter school opening or significantly expanding its enrollment on or after February 1, a provision permitting, but not requiring, States and LEAs to implement procedures to provide the charter school with a *pro rata* portion of the proportionate amount of funds for which the charter school is eligible under a covered program;
- For covered programs in which States and LEAs award funds through a competitive process, a requirement that States and LEAs implement procedures that ensure that each eligible charter school scheduled to open during the academic year has a full and fair opportunity to apply to participate in the program;
- A general prohibition against States and LEAs relying on enrollment or eligibility data from a prior year in determining a charter school's eligibility to receive funds under a covered program during an academic year in which the charter school opens for the first time or significantly expands its enrollment, even if allocations to other LEAs or public schools are based on a prior year's data; and
- An exemption from the proposed regulations for SEAs and LEAs that do not allocate funds by formula or hold competitions among eligible applicants under a covered program.

In order to receive funds in accordance with the requirements in the final regulations, a charter school must notify the State agency or LEA responsible for administering the program of the date the charter school is scheduled to open or significantly expand its enrollment. Upon receiving notice, the State or LEA must provide the charter school with *timely and meaningful information* about any covered program for which the charter school may be eligible.

The full text of the final regulations is attached to this nonregulatory guidance as Appendix A.

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III. QUESTIONS & ANSWERS

A. GENERAL REGULATORY REQUIREMENTS APPLICABLE TO ALL COVERED PROGRAMS

This section of the nonregulatory guidance addresses general implementation issues that arise under the various covered programs. In order to trigger application of the final regulations, a charter school that is opening for the first time or significantly expanding its enrollment must comply with the requirements for notice and information set forth in the final regulations. Once the new or expanding charter school has met these requirements, the responsible State agency or LEA must ensure that the charter school receives the funds for which it is eligible within the time periods set forth in the final regulations. In determining a charter school's eligibility to receive funds under a covered program during an academic year in which the charter school opens for the first time or significantly expands its enrollment, the State or LEA may not rely on enrollment or eligibility data from a prior year, even if allocations to other LEAs or public schools are based on a prior year's data. Under section 10306 of the ESEA, which the final regulations implement, eligibility determinations must be made based on current enrollment data of newly opened or expanded charter schools.

1. To which programs do the final regulations apply?

As a general rule, the final regulations apply to all elementary and secondary education programs administered by the Department and under which the Secretary allocates funds to States by formula. The regulations cover the Department's major formula grant programs in which States sub-allocate funds to LEAs and other eligible applicants by formula, including Title I, Part A of the ESEA (Title I); Part B of the Individuals with Disabilities Education Act (Part B or IDEA); and Titles I and II of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III). The final regulations also apply to programs such as Safe and Drug-Free Schools and Communities (Safe and Drug-Free Schools), Comprehensive School Reform Demonstration (CSRD), Even Start Family Literacy (Even Start), Goals 2000, and Adult Education and Family Literacy (Adult Education), under which the Department allocates funds to States by formula but States award some or all subgrants to LEAs and other eligible applicants on a competitive basis. Other Department programs to which the final regulations apply are Class-Size Reduction (Class-Size); Eisenhower Professional Development (Eisenhower); Emergency Immigrant Education; Homeless Children and Youth Assistance (Homeless); Innovative Education Program Strategies; Migrant Education; Neglected and Delinquent Children; and the Technology Literacy Challenge Fund (TLCF). The final regulations do not apply to formula grant programs, such as Impact Aid or Indian Education, under which the Department allocates funds directly to LEAs. The term *covered program* will be used in this nonregulatory guidance to refer to the programs

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listed above² and any other program in which the Secretary allocates funds to States on a formula basis. See 34 CFR §76.787.

For summaries of the programs covered by the final regulations, including basic eligibility and other program requirements, see Program Summaries, attached to this nonregulatory guidance as Appendix B.

2. What is a charter school?

The final regulations adopt the ESEA definition of *charter school*. Section 10310(1) of the ESEA (20 U.S.C. 8066(1)), defines a *charter school* as a public school that --

- (a) In accordance with a specific State statute authorizing the granting of charters to schools, is exempted from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph;
- (b) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;
- (c) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;
- (d) Provides a program of elementary or secondary education, or both;
- (e) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;
- (f) Does not charge tuition;
- (g) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals with Disabilities Education Act;
- (h) Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be

² This list of programs is intended only as a guide. There may be additional ED programs that are governed by section 10306 of the ESEA and the final regulations that are not included on this list.

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accommodated;

- (i) Agrees to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program;
- (j) Meets all applicable Federal, State, and local health and safety requirements;
- (k) Operates in accordance with State law; and
- (l) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

A charter school must meet each element of this definition in order to receive funds under a covered program in accordance with the final regulations. 34 CFR §76.787.

For information on how charter schools may be developed and operated consistent with Federal civil rights laws, see “Applying Federal Civil Rights Laws to Public Charter Schools: Questions and Answers” (May 2000), issued by the Department’s Office for Civil Rights, at http://www.uscharterschools.org/pub/uscs_docs/fr/civil_rights_sub.htm

3. Do the requirements in the final regulations apply to LEAs as well as SEAs?

Yes. Each LEA that is responsible for funding a charter school under a covered program must comply with the requirements in the final regulations on the same basis as SEAs are required to comply. As a general rule, when applying the final regulations to LEAs, references to *SEA* or *State* should be read as references to *LEA*; references to *charter school LEA* should be read as references to *charter school*; and references to *LEA* should be read as references to *public school*. In accordance with existing regulations applicable to the covered programs, States must ensure that LEAs meet the requirements of section 10306 of the ESEA and the final regulations. Accordingly, the Secretary encourages States to develop written procedures for LEAs to follow when providing funds to new or expanding charter schools. 34 CFR §§76.770; 76.799.

States are responsible for ensuring that LEAs meet the requirements of the final regulations when allocating funds to new or expanding charter schools under a covered program.

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4. Are State agencies that are not SEAs required to comply with the final regulations?

Yes. A State agency that is not an SEA but administers a covered program is required to comply with the provisions of the final regulations when providing funds to new or expanding charter schools by formula or through a competition. Examples of these State agencies include State vocational education agencies and workforce commissions under the Vocational Education Basic Grants and Tech-Prep Education programs authorized by Perkins III; State agencies for higher education under the Eisenhower program; and the State agency that administers the Governor's Programs under the Safe and Drug-Free Schools program. When providing funds to new or expanding charter schools under the final regulations, non-SEA State agencies must comply with the provisions of the final regulations to the same extent that they would if they were SEAs. 34 CFR §76.786(b); see also Q&A No. 10 (notice to non-SEA State agencies).

5. Are States and LEAs required to comply with the final regulations when allocating funds to *all* charter schools that meet the eligibility requirements of a covered program?

No. The final regulations apply only to eligible charter schools that open for the first time or significantly expand their enrollment during the academic year for which funds are allocated under a covered program. Therefore, States and LEAs must comply with the final regulations when allocating funds to new or expanding charter schools. During years in which an eligible charter school is neither opening for the first time nor significantly expanding its enrollment, the SEA or LEA is under no obligation to follow the final regulations when allocating funds, and should provide funds to the charter school on the same basis as it provides funds to other eligible LEAs and public schools. 34 CFR §76.786(c).

The final regulations apply only to charter schools that are opening for the first time or significantly expanding their enrollment.

6. How does a State or LEA determine whether a charter school has undergone a significant expansion of enrollment?

Section 76.787 of the final regulations defines the term *significant expansion of enrollment* as a “substantial increase in the number of students attending a charter school due to a significant event that is unlikely to occur on a regular basis, such as the addition of one or more grades or educational programs in major curriculum areas.” The requirements in the final regulations are not triggered by minor increases in enrollment caused by normal turnover. Rather, the regulations apply to substantial increases in enrollment that are caused by significant, or unusual, events. A charter school for the performing arts, for example, may offer two educational

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programs that focus on music and art. If the charter school were to add a third educational program in dance, and the addition of that program resulted in a substantial increase in the number of students attending the charter school, then the State agency or LEA serving the charter school would be required to comply with the final regulations when providing funds to the charter school under a covered program. It is not enough for a charter school to experience a significant event, but the event must also result in a substantial increase in the number of students attending the charter school. The increase must occur in the charter school's overall enrollment without regard to student eligibility for funds under a particular program. It should also be noted that the final regulations give States unfettered discretion to determine any expansion of enrollment in a charter school to be *significant* within the meaning of the final regulations. This authority does not extend to LEAs. Nor does it permit a State to treat a significant expansion of enrollment as insignificant in order to avoid its obligations under the final regulations.

7. Are States and LEAs required to comply with the final regulations when making allocations to new or expanding charter schools that do not receive funds under the PCSP?

States and LEAs must comply with the final regulations when making allocations to any new or expanding public school that meets the definition of *charter school* as set forth in section 10310(1) of the ESEA, even if the charter school does not receive funds under the PCSP. A public school that does not meet the ESEA definition of *charter school*, however, is not a charter school for purposes of section 10306 of the ESEA or the final regulations, and neither the State nor the LEA is obligated to comply with the final regulations when making allocations to such school. 34 CFR §76.787.

8. May States and LEAs use non-Federal funds to meet their obligations under the final regulations?

States and LEAs must follow applicable program requirements when allocating funds to LEAs and public schools, including charter schools, under a covered program. While a State or LEA may use non-Federal funds to supplement allocations to LEAs and public schools that are reduced as a result of the State or LEA's compliance with the final regulations, the State or LEA may not substitute non-Federal funds for Federal funds when awarding subgrants under a covered program. 34 CFR §76.788(c).

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9. Are States that do not participate in the PCSP required to comply with the final regulations when making allocations to new or expanding charter schools?

As a general rule, yes. States must comply with the final regulations when making allocations to new or expanding charter schools under a covered program, regardless of whether the State participates in the PCSP. Because one of the elements of a *charter school* under the ESEA definition is the existence of a specific State law authorizing the establishment of charter schools (see Q&A No. 2), however, a State that does not have charter school legislation will not have schools that meet the ESEA definition and, as such, is not required to comply with the final regulations. 34 CFR §76.786(a) and (b).

A-1. RESPONSIBILITY FOR NOTICE AND INFORMATION

10. Do charter schools have any responsibilities under the final regulations? If so, what are they?

A charter school that is opening for the first time or significantly expanding its enrollment must notify the responsible State or local agency, in writing, at least 120 days in advance, of the date the charter school is scheduled to open or expand.

Charter schools have four major responsibilities under the final regulations. First, in order to receive funds in accordance with the final regulations, a new or expanding charter school must notify the State or LEA, in writing, at least 120 days in advance, of the date the charter school is scheduled to open or expand. In most cases, notice to the SEA will

suffice as notice to the State, since the SEA is the State agency responsible for administering most of the covered programs. Under several covered programs, however, a State agency other than the SEA is responsible for administering the grant and awarding subgrants to eligible applicants. In order to trigger application of the final regulations under these programs, a new or expanding charter school must provide written notice of the date it is scheduled to open or expand to the specific State agency responsible for administering the program. Upon receiving such notice, in accordance with section 76.786(b) of the final regulations, the non-SEA State agency must comply with the provisions of the final regulations to the same extent that it would if it were an SEA. *See Q&A No. 4 for examples of non-SEA State agencies responsible for administering a covered program.*

Second, a charter school must establish its eligibility to receive funds under the particular program and comply with all program requirements. Third, upon request, a charter school that has not yet opened or expanded must provide the responsible State agency or LEA with any data or information available to the charter school that the State or LEA may reasonably need to

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estimate the amount of funds the charter school will be eligible to receive when it actually opens or expands. Fourth, once a charter school actually opens or expands, it must provide actual enrollment and eligibility data to the State or LEA. States have wide discretion in establishing procedures for charter schools to meet these requirements. 34 CFR §76.786(b) and 76.788.

11. What happens if a charter school that has not yet opened or expanded fails to comply with a request from the State or LEA for data or information?

Under section 76.788(b) of the final regulations, a charter school that has not yet opened or expanded must provide the State or LEA with any available data or information that the State or LEA *reasonably* requests to assist it in estimating the charter school's projected enrollment. The State or LEA might request, for example, pre-registration lists or enrollment data from the prior academic year. While the charter school is not required to create any new data, once the charter school actually opens or expands, it is required to provide the State or LEA with actual enrollment and eligibility data. Under the final regulations, the State or LEA may elect not to provide any funds to a new or expanding charter school until the charter school has provided the State or LEA with actual enrollment and eligibility data. 34 CFR §76.788(b).

12. When is a new or expanding charter school required to provide actual enrollment and eligibility data to the responsible State agency or LEA?

Section 76.788(b)(2) of the final regulations requires a charter school to provide actual enrollment and eligibility data to the State or LEA at a time the State or LEA may *reasonably require*. Thus, the regulations provide flexibility to States and LEAs to set reasonable timeframes for collecting actual enrollment and eligibility data from charter schools. 34 CFR §76.788(b)(2).

13. What happens if the responsible State agency or LEA does not receive at least 120 days' written notice of the date an eligible charter school is scheduled to open or expand?

The final regulations are triggered when the State agency or LEA responsible for administering a particular covered program receives written notice of the date a charter school is scheduled to open for the first time or significantly expand its enrollment. Thus, a State or LEA that receives such notice, albeit less than 120 days in advance, is still bound by the requirements in the final regulations. In such a case, however, the State or LEA is relieved of any obligation it may have had to provide funds to the charter school within five months. Instead, the State or LEA may treat the charter school as if it opened or expanded between November 1st and February 1st, and

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wait until the succeeding academic year, when it makes allocations to other LEAs or public schools, to provide the new or expanded charter school with its share of funds for the preceding academic year. As a practical matter, this exception to the five month funding requirement applies only to charter schools opening or expanding by November 1st, since the requirement does not apply to charter schools opening or expanding after that date. In cases where an eligible charter school opens before November 1st, and provides written notice to the responsible State agency or LEA less than 120 days before the opening date but more than 120 days before November 1st, the State or LEA should make every effort to provide funds to the charter school within five months of November 1st, since doing so will not cause the State or LEA any additional harm or inconvenience. 34 CFR §§76.788(a) and 76.789(b)(3).

14. What happens if the responsible State agency or LEA does not receive any notice that an eligible charter school has opened or expanded?

As stated above, the requirements in the final regulations are triggered only when the State agency or LEA responsible for administering a particular covered program receives written notice that a charter school in the State or LEA will be opening for the first time or significantly expanding its enrollment. Either the charter school or its authorized public chartering agency must provide such notice to the responsible State agency or LEA. A State or LEA that does not receive written notice of the date an eligible charter school is scheduled to open or expand (or the date the charter school opened or expanded) is not required to comply with the requirements in the final regulations when providing funds to the charter school. 34 CFR §76.788(a).

An SEA or LEA that does not receive written notice that a charter school has opened or expanded is not required to comply with the final regulations when allocating funds to the charter school.

15. What are the major responsibilities of States and LEAs under the final regulations?

States and LEAs have two major responsibilities under the final regulations. First, upon receiving written notice of the date a charter school is scheduled to open for the first time or significantly expand its enrollment, the State agency or LEA responsible for administering the program must provide the charter school with *timely and meaningful information* about each covered program in which the charter school may be eligible to participate (for a discussion of *timely and meaningful information*, see Q&A No. 16). Second, States and LEAs are required to implement procedures that ensure the following:

Upon receiving written notice that a charter school is scheduled to open or expand, or has opened or expanded, the responsible SEA or LEA must provide the charter school with timely and meaningful information about the covered programs in which the charter school may be eligible to participate.

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- (a) That each charter school opening or expanding on or before November 1st of an academic year receives the proportionate amount of funds for which it is eligible within five months; and
- (b) That each charter school opening or expanding between November 1st and February 1st of an academic year receives at least a *pro rata* portion of the proportionate amount of funds for which it is eligible. The State or LEA must provide funds to these charter schools no later than the date the State or LEA allocates funds to other LEAs and public schools under the program for the succeeding academic year.

Although States and LEAs may choose to implement procedures to provide a *pro rata* portion of funds to eligible charter schools that open or expand after February 1st of an academic year, the final regulations do not require them to do so. States and LEAs that choose to provide funds to such charter schools may establish their own time frames for making the allocations, except that allocations must be made from applicable program funds allocated to the State or LEA for the academic year in which the charter school opens or expands or for the succeeding academic year. 34 CFR §§76.789(a) and 76.792-76.793.

16. How does a State or LEA provide timely and meaningful information to a charter school?

A State or LEA provides *timely and meaningful information* to a charter school when it provides the charter school with the information the charter school reasonably needs to know to make an informed decision about whether to apply to participate in a particular covered program and the steps the charter school needs to take to do so. For each covered program, the responsible State agency or LEA should provide the charter school with basic program information, such as the program's purpose, target population, eligibility requirements, application packages, dates of any competitions, copies of the statute, relevant regulations and guidance, etc. In terms of timing, the State agency or LEA should provide the information as early as possible to afford the charter school a genuine opportunity to apply to participate in the program. 34 CFR §76.789(a).

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A-2. ELIGIBILITY AND ALLOCATION OF FUNDS

17. What eligibility requirements must a new or expanding charter school meet in order to receive funds in accordance with the final regulations? May an SEA or LEA rely on enrollment or eligibility data from a prior year when determining the eligibility of a new or expanding charter school to receive funds under a covered program?

In order to receive funds under the final regulations, new and expanding charter schools must meet the same eligibility requirements as other LEAs and public schools, except that the eligibility of a new or expanding charter school to receive funds may not be based on data from a prior year.

In order to receive funds under the final regulations, a new or expanding charter school generally must meet the same eligibility requirements that apply to other LEAs and public schools under the applicable program. Section 10306 of the ESEA and the final regulations create an exception to this rule, however, with respect to the use of prior year data. For the year a charter school opens for the first time or significantly expands its enrollment, States and LEAs are precluded from determining the charter school's eligibility to participate in a covered program on the basis of enrollment or eligibility data from a prior year. This is true even if eligibility determinations for other LEAs and public schools under the program are based on data from a prior year. Thus, even in programs such as Title I, Title II, and Part B of IDEA, where the statutory allocation formulas rely on data from a prior year, a charter school that does not have prior year data because it is opening for the first time cannot be denied funding on that basis. Likewise, a State or LEA is precluded from relying on prior year data in determining the allocation amount for a charter school that has undergone a significant expansion of enrollment. Under the final regulations, the responsible State agency or LEA would be required to determine the new or expanding charter school's allocation on the basis of current eligibility or enrollment data. 34 CFR §§76.788(c), 76.789(b)(1)(ii), and 76.791; see also Q&A Nos. 25 (adjustments to allocations) and 34 (alternatives to using a prior year's data).

For a discussion of a State or LEA's options for determining the amount of funds to provide to a new or expanding charter school under a formula program in which allocations are based on a prior year's data, see Q&A No. 34. For questions and answers related to implementation of the final regulations under Title I and Part B of IDEA, see Sections III-E and III-F, respectively, in this nonregulatory guidance.

18. Is a State or LEA required to provide funds to a new or expanding charter school that does not meet the statutory or regulatory requirements for eligibility under the applicable program?

As stated above, the final regulations preclude a State or LEA from relying on prior year data in determining the eligibility of a new or expanding charter school to receive funds under a covered program, even if the applicable program statute or regulations require the use of such data in making eligibility determinations. Otherwise, in order to receive funds, a charter school that is opening for the first time or significantly expanding its enrollment must meet the same eligibility requirements that apply to other LEAs and public schools. In the absence of statutory or other regulatory language to the contrary, the final regulations should not be interpreted to afford any special rights or privileges to charter schools with regard to program eligibility. Thus, with the exception of the use of prior year data, a State or LEA is not required to comply with the final regulations with respect to a new or expanding charter school that does not meet the eligibility and other requirements of the applicable covered program. 34 CFR §§76.788(c), 76.789(b)(1)(ii), and 76.791.

19. May a State or LEA rely on enrollment or eligibility data from a prior year when estimating the amount of funds a charter school will be eligible to receive when it actually opens or expands?

States and LEAs may rely on enrollment or eligibility data from a prior year to estimate an expanding charter school's projected enrollment. A charter school that is opening for the first time will not have any prior year data. Nevertheless, States and LEAs may rely on other reasonable data to estimate the amount of funds to reserve for a new charter school. 34 CFR §76.789(b)(2).

20. May a State or LEA allocate funds to a new or expanding charter school based on an estimate of projected enrollment at the charter school?

Yes. Section 76.789(b)(2) of the final regulations authorizes a State or LEA to reserve an appropriate amount of funds or to make an initial allocation to eligible charter schools based on projected data. Accordingly, section 76.788(b)(1) requires a charter school to provide the State or LEA with any *available* data or information that the State or LEA may reasonably require to make these projections. Any data upon which a State or LEA relies to estimate the amount of funds to reserve for, or allocate to, a new or expanding charter school must be reasonable. If an SEA or LEA allocates funds on the basis of projected data, the agency must subsequently adjust those allocations to reflect actual data when such data become available. 34 CFR §§76.788(b)(1), 76.789(b)(2), and 76.796; see also Q&A No. 24.

21. Are States and LEAs required to rely on estimates of projected enrollment when allocating funds to new or expanding charter schools under a covered program?

No. States and LEAs are not required to use projected data when providing funds to new or expanding charter schools. Rather, the State or LEA may reserve funds off the top of its total allocation under the particular program, and wait until actual data are available before making any allocations to charter schools. 34 CFR §§76.788(b)(2) and 76.793.

Although the final regulations permit States and LEAs to provide funds to new or expanding charter schools based on estimates of projected enrollment, States and LEAs are not required to provide any funds until the charter school actually opens or expands and provides the responsible State agency or LEA with actual enrollment or eligibility data.

22. How does a State or LEA determine whether to treat a charter school as an LEA or a public school within an LEA for purposes of allocating funds under a covered program?

Each of the Federal statutes governing the covered programs defines LEA for purposes of the programs authorized under the statute. Because these definitions are broad and rely heavily on State law, the Department generally will defer to the State on the question of whether a charter school is an LEA or a public school within an LEA. The State determination must be consistent with Federal and State law, however, and may not violate any established State policies or practices. The Department urges States to develop clear policies for determining whether charter schools in the State are LEAs or public schools within an LEA under each of the covered programs. 34 CFR §76.787.

23. May a charter school be treated as an LEA for purposes of some covered programs and a public school within an LEA for purposes of other covered programs?

As a general rule, a charter school cannot be an LEA and a public school within an LEA under the same Federal definition of *local educational agency*. Title XIV of the ESEA, for example, defines *LEA* for purposes of programs authorized under the ESEA. Because both Even Start and Safe and Drug-Free Schools are authorized under the ESEA, a charter school could not be an

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LEA for purposes of Even Start and a public school within an LEA for purposes of Safe and Drug-Free Schools. Likewise, because Perkins III adopts the ESEA definition of *LEA*, a charter school could not be treated differently for purposes of ESEA programs and programs authorized under Perkins III.

Part B of IDEA, on the other hand, contains its own definition of *LEA*. Therefore, it is conceivable that a charter school could be treated as an LEA for purposes of ESEA and Perkins III programs, and a public school within an LEA for purposes of programs authorized under Part B of IDEA. The charter school would have to be treated consistently under the Grants to States and Preschool Grants programs, though, since both of these programs are authorized under Part B of IDEA.

One exception to the general rule that a charter school cannot be treated as an LEA and a public school within an LEA under different covered programs that rely on the same Federal definition of *LEA*, is where a State law provision specifically authorizes charter schools to elect to be treated as an LEA or a public school within an LEA for purposes of a particular program. In such a case, the Department generally will defer to the State law. 34 CFR §76.787.

A-3. ADJUSTMENTS

24. Under what circumstances is a State or LEA required to adjust an allocation previously made to a new or expanding charter school under the final regulations?

Section 76.789(b) of the final regulations provides States and LEAs with the flexibility to allocate funds to new or expanding charter schools based on reasonable estimates of projected enrollment at the charter school. If a State or LEA provides funds to a new or expanding charter school based on projected data and, after the charter school opens or expands, actual enrollment or eligibility data show that the State or LEA has allocated more or fewer funds to the charter school than the amount for which the charter school was eligible, then the State or LEA must make appropriate adjustments to the allocation previously made to the charter school. The purpose of this requirement is to ensure that new and expanding charter schools receive the amount of funds for which they are eligible -- no more and no less. Accordingly, States and LEAs must make adjustments to charter school allocations for both overpayments and underpayments, as well as appropriate adjustments to the allocations of other LEAs and public schools. For example, if projected enrollment data result in an SEA allocating too few funds to a charter school LEA, the SEA would be required to adjust upward the charter school LEA's allocation when actual enrollment data are available. Similarly, if the SEA

States and LEAs that allocate more or fewer funds to a new or expanding charter school than the amount for which the charter school is eligible must make adjustments to the allocations based on actual eligibility or enrollment data when the charter school opens or expands.

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reserves more funds off the top of its total allocation than are needed to make allocations to eligible charter schools, the SEA must return the excess funds to its other LEAs in proportion to their initial allocations. 34 CFR §76.796.

25. May a State or LEA rely on eligibility or enrollment data from a prior year when making required adjustments to allocations under the final regulations?

No. Any required adjustments to allocations for a given academic year must be based on actual enrollment or eligibility data for the charter school on or after the date the charter school opens for the first time or significantly expands its enrollment. The adjustments may not be based on enrollment or eligibility data from a prior year, even if allocations to other LEAs and public schools under the program are based on a prior year's data. 34 CFR §76.791; see also Q&A No. 17.

26. When are States and LEAs required to make adjustments under the final regulations?

States and LEAs must make any necessary adjustments to allocations under a covered program on or before the date the State or LEA allocates funds to LEAs and public schools under the program for the succeeding academic year. Thus, a State or LEA may make adjustments immediately, when it makes the next year's allocations, or anytime in between. 34 CFR §76.797(a).

27. May States or LEAs use funds allocated for the succeeding academic year to make required adjustments under the final regulations?

Yes. When making adjustments to allocations under the final regulations, the State or LEA may use funds from the State's allocation under the applicable covered program for the academic year in which the charter school opened or expanded, or from the State's allocation under the program for the academic year immediately following the academic year in which the charter school opened or expanded. 34 CFR §76.797(b).

28. How does a State or LEA reallocate funds if a charter school closes?

Neither section 10306 of the Act nor the final regulations prescribe closeout or reallocation procedures for States or LEAs to follow if and when a charter school closes. Therefore, as a general rule, if a charter school that has received funds in accordance with these final regulations closes, States and LEAs should follow the same procedures that are used to close out subgrants

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and reallocate funds for other eligible entities under the applicable program. See 34 CFR §80.50.

B. PROGRAMS IN WHICH STATES OR LEAS ALLOCATE FUNDS BY FORMULA

This section of the guidance addresses issues regarding implementation of the final regulations in covered programs under which the State or LEA allocates funds on a formula basis. These programs include Class-Size, Eisenhower, Emergency Immigrant Education, Homeless, Innovative Education Program Strategies, Safe and Drug-Free Schools, Vocational Education Basic Grants, and Tech-Prep (see footnote 2). As a general rule, when allocating funds under these programs, States and LEAs must treat charter schools in a manner consistent with the applicable program statute and regulations, and ensure that charter schools receive the proportionate allocations for which they are eligible under the program. In a State that considers charter schools to be LEAs, the State must treat those charter schools like other LEAs in the State when making eligibility determinations and allocating funds under these programs. Similarly, if a State considers charter schools to be public schools within an LEA, the LEA must treat its charter schools like other public schools within the LEA when determining eligibility and making within-district allocations.

This section of the guidance does not address issues relating to Title I or Part B of IDEA. For questions and answers regarding implementation of the final regulations under those formula grant programs, see sections III-E and III-F, respectively, of this nonregulatory guidance.

29. How and when does a State or LEA allocate funds to an eligible charter school that opens or expands on or before November 1st of an academic year?

For each charter school that opens for the first time or significantly expands its enrollment on or before November 1st of an academic year, the State or LEA must implement procedures to ensure that the charter school receives the proportionate amount of funds for which the charter school is eligible under the applicable program. States are given broad discretion to develop their own procedures for meeting the requirements of the final regulations. The procedures must ensure, however, that charter schools opening or expanding by November 1st receive the funds for which they are eligible within five months of the date they open or expand. 34 CFR §§76.792(a) and 76.793(a). See also Q&A No. 33.

Charter schools opening for the first time or significantly expanding their enrollment on or before November 1st must receive the funds for which they are eligible within five months of the date they open or expand.

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30. How and when does a State or LEA allocate funds to an eligible charter school that opens or expands between November 1st and February 1st of an academic year?

For each charter school that opens for the first time or significantly expands its enrollment after November 1st but before February 1st of an academic year, the State or LEA must implement procedures to ensure that the charter school receives at least a *pro rata* portion of the funds for which the charter school is eligible under the applicable program. The *pro rata* amount must be based on the number of months or days the charter school will participate in the program as compared to the total number of months or days in the academic year. The funds must be made available to the charter school on or before the date the State or LEA allocates funds to LEAs or public schools under the applicable program for the succeeding academic year. 34 CFR §§76.792(b) and 76.793(b).

31. How and when does a State or LEA allocate funds to an eligible charter school that opens or expands after February 1st of an academic year?

Although States and LEAs *may* provide funds to charter schools that open for the first time or significantly expand their enrollment after February 1st of an academic year, they are not required to do so. States or LEAs that elect to fund such charter schools may provide the charter school with a *pro rata* portion of the funds for which the charter school is eligible under the applicable program. Again, the *pro rata* amount must be based on the number of months or days the charter school will participate in the program as compared to the total number of months or days in the academic year. Because States and LEAs are not required to fund charter schools that open or expand after February 1st, States and LEAs that elect to do so may establish their own procedures and timeframes for providing the funds. In providing funds to charter schools that open or expand after February 1st, however, the State or LEA must use funds allocated to the State under the applicable program for the academic year in which the charter school opened or expanded, or for the succeeding academic year. 34 CFR §§76.792(c); see also Q&A No. 32.

32. May States and LEAs use funds allocated to them for the succeeding academic year when providing funds to charter schools that opened or expanded during the preceding academic year?

For charter schools that open for the first time or significantly expand their enrollment after November 1st, a State or LEA may provide funds to the charter school from the State or LEA's allocation for the academic year in which the charter school opens or expands, or from its allocation for the succeeding academic year. Thus, a Title I-eligible charter school that opened or expanded on December 1st of the 1999-2000 academic year would receive a *pro rata* amount

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of Title I funds. The State or LEA could provide the funds to the charter school anytime between December 1, 1999, and the date the State or LEA makes Title I allocations to other LEAs and public schools for the 2000-2001 academic year. If the State or LEA elects to wait until the 2000-2001 academic year to make the award, the State or LEA could use its Title I allocation for that academic year. This funding option would not be available to the State or LEA if the charter school opened or expanded on or before November 1, 1999, since the State or LEA will not have received its Title I allocation for the 2000-2001 year within the five month time period by which the charter school must receive the funds. 34 CFR §§76.793(a); 76.793(b)(2).

33. What types of procedures may States and LEAs develop for allocating funds to new or expanding charter schools under the final regulations?

In recognition of the potential administrative burden that section 10306 of the ESEA may place on States and localities, the final regulations are intended to allow States and LEAs maximum flexibility to develop procedures that will enable them to comply with the statutory requirement in a manner that minimizes any disruption in State and local administration of the covered programs. Examples of procedures States and LEAs could implement include reserving an appropriate amount of funds from their total allocation under a covered program; reserving an appropriate amount of funds from the allocation to a particular LEA or public school based on the number of students from that LEA or public school who are expected to attend the charter school; and using, for charter school allocations, any carryover, reallocation, State or local administration, or other discretionary funds that may be available at the State and local levels. 34 CFR §76.792; see also Q&A Nos. 28-31.

States and LEAs may exercise maximum flexibility in developing procedures for allocating funds to new and expanding charter schools.

34. How does a State or LEA determine the amount of funds to provide to a new or expanding charter school under a formula program in which allocations are based on a prior year's data?

Under section 76.791(b) of the final regulations, a State or LEA may not deny funding to a new charter school due to the lack of a prior year's data; nor may a State or LEA determine the amount of funds to provide to an expanding charter school based on a prior year's data. States and LEAs have some flexibility, however, in determining the amount of funds a new or expanding charter school is eligible to receive. Consider, for example, a charter school LEA that is scheduled to open for the first time in September 2001 and meets the statutory requirements for eligibility under the Title II (i.e., Eisenhower) program. Under the Title II statute (section 2203 of the ESEA), one-half of an LEA's program allocation must be based on the relative share

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of Title I funds the LEA received in the previous year (the other half of the allocation is based on the LEA's relative enrollment for the current year).

If the charter school LEA opens in September 2001 as scheduled, under section 76.793(a) of the final regulations, the State would have to provide Title II funds to the charter school LEA within five months. In addition, the eligibility determination and 100 percent of the program allocation for the charter school LEA would have to be based on current year data, even though eligibility determinations and one-half of the program allocations for other LEAs and public schools would be based on data for a prior year. In other words, the final regulations require States to provide each charter school LEA that opens for the first time or significantly expands its enrollment with the *full* Title II allocation for which the charter school LEA is eligible, including a portion based on its proportionate share of Title I funds, even though a newly created charter school will not have generated a Title I allocation for the previous year.

Continuing with the example above, for a charter school LEA that opens or expands in September 2001, the State may determine the amount of Title II funds for which the charter school LEA is eligible for the 2001-02 academic year in any one of the following ways:

- (a) Using the current year's Title I eligible children for the new or expanding charter school LEA, redetermine the prior year's Title I allocations, including allocations for new or expanding charter school LEAs as if they had been in existence in that prior year. Each new or expanding charter school LEA would receive that proportion of Title II funds.
- (b) Use the current year's Title I allocations for all LEAs, including new and expanding charter school LEAs, to determine the proportionate share of Title II funds each new and expanding charter school LEA is eligible to receive.

The preceding options for allocating Title II funds to new or expanding charter school LEAs are based on statutory and regulatory provisions that require eligibility determinations for these schools to be based on current enrollment data. States and LEAs should not follow the final regulations or these guidelines when allocating funds to a charter school during a year in which the charter school is neither opening for the first time nor significantly expanding its enrollment. In such cases, the State or LEA should adhere to the statutory formula for allocating funds under the applicable program. 34 CFR 76.791; see also Q&A No. 17.

For questions and answers regarding allocations under Title I and Part B of IDEA, see Sections III-E and III-F, respectively, in this nonregulatory guidance.

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C. PROGRAMS IN WHICH STATES OR LEAS AWARD SUBGRANTS ON A COMPETITIVE BASIS

This section of the guidance addresses issues related to the eligibility of charter schools to receive funds under Department programs in which States or LEAs award subgrants on a competitive basis. These programs include Adult Education, CSRD, Eisenhower, Emergency Immigrant Education, Even Start, Goals 2000, Homeless, Safe and Drug-Free Schools, TLCF, and Tech-Prep (see footnote 2).

35. Are States and LEAs required to comply with the final regulations when awarding subgrants on a competitive basis? How does a State or LEA provide funds to new or expanding charter schools under a program in which subgrants are awarded on a competitive basis?

States and LEAs are required to comply with the final regulations when awarding subgrants on a competitive basis. For covered programs in which the State or LEA awards subgrants on a competitive basis, the State or LEA must provide eligible charter schools that are scheduled to open for the first time or significantly expand their enrollment on or before the closing date of the competition a *full and fair opportunity* to compete for funds under the program. Because the ultimate decision of whether to fund an eligible applicant under a discretionary grant program lies within the discretion of the State or LEA, a new or expanding charter school could be eligible to participate in such a program and still not receive funding. Accordingly, for discretionary programs in which States or LEAs award subgrants on a competitive basis, section 76.794(a) of the final regulations require States and LEAs to provide eligible charter schools that are scheduled to open on or before the closing date of any competition under the program with a full and fair opportunity to apply to participate in the program. Existing charter schools that significantly expand their enrollment must be provided the same information and given the same opportunity to compete for funds under these programs as other existing LEAs and public schools. 34 CFR §76.794(a).

For a discussion of full and fair opportunity, see Q&A No. 38.

36. What eligibility requirements must a charter school meet in order to apply to participate in a program in which subgrants are awarded on a competitive basis?

In order to apply to participate in a grant program in which States or LEAs award subgrants on a competitive basis, a charter school generally must establish itself as an *eligible applicant* on the same basis as other eligible applicants under the program. Eligible applicants under these programs may consist of one or more of a broad range of educational entities, including LEAs,

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institutions of higher education, community-based organizations, public and private non-profit agencies, public schools, etc. Under the CSRD, Goals 2000, Homeless, and TLCF programs, for example, eligibility for subgrants is limited to LEAs. Therefore, only *charter school LEAs* are eligible to compete directly for subgrants under these programs. The Adult Education program, on the other hand, authorizes States to award subgrants to a number of entities, including LEAs, community-based organizations, institutions of higher education, public and private non-profit agencies, libraries, etc. Thus, a charter school that is not its own LEA, but is established as a non-profit agency, could qualify as an eligible applicant under the Adult Education program.

A new or expanding charter school that does not qualify as an eligible applicant for a direct grant under a particular program still may be eligible to participate in the program as part of the LEA's application. When providing funds under such circumstances, the LEA should consider charter schools on an equitable basis with other public schools within the LEA. 34 CFR §§76.788(c) and 76.789(b)(1)(ii).

37. What information must a charter school provide to the State or LEA in order to compete for funds under a program in which subgrants are awarded on a competitive basis?

A charter school that is interested in competing for funds under a program in which subgrants are awarded on a competitive basis must notify the responsible State agency or LEA, in writing, of the date the charter school is scheduled to open. Upon receiving such notice, the State agency or LEA is required to provide the charter school with a *full and fair opportunity* to apply to participate in the program. 34 CFR §§76.788(a) and 76.794(a); see also Q&A No. 38.

38. How does a State or LEA provide eligible charter schools with a full and fair opportunity to compete for funds under a program in which subgrants are awarded on a competitive basis?

A State or LEA generally provides a new or expanding charter school with a *full and fair opportunity* to apply to participate in a covered program in which subgrants are awarded on a competitive basis if the State or LEA provides the charter school with *timely and meaningful information* about the program, including dates of any upcoming competitions. The State or LEA must provide timely and meaningful information to the charter school about any program for which the charter school may be eligible to participate, provided that the charter school notifies the responsible State agency or LEA of the date the charter school is scheduled to open or expand. 34 CFR §76.789(a).

For a discussion of timely and meaningful information, see Q&A No. 16.

39. May a charter school that has not yet opened compete for a subgrant under these programs?

Yes. A charter school that meets the eligibility requirements for the applicable program may compete for a subgrant, even if it has not yet opened. The charter school must be scheduled to open on or before the closing date of the competition, however, and must actually open in order to receive any funds under the program. 34 CFR §76.794(a).

40. Are States and LEAs required to provide a full and fair opportunity to eligible charter schools that are scheduled to open *after* the closing date of a subgrant competition?

No. When awarding subgrants on a competitive basis, a State or LEA is not required to provide a full and fair opportunity to participate in the program to any charter school that is scheduled to open after the closing date of a subgrant competition. 34 CFR §76.794(a).

41. Is a State or LEA required to delay a subgrant competition in order to allow a charter school that has not yet opened or expanded to compete for funds under a covered program?

No. A State or LEA is not required to delay the competitive process in order to allow a new or expanding charter school to compete for funds under a covered program. As stated above, a charter school that is not scheduled to open on or before the closing date of a subgrant competition is not eligible to apply to participate in the program. A charter school that is scheduled to open before the closing date of a subgrant competition, on the other hand, continues to be eligible to compete for funds, even if it does not actually open until after the competition has closed. The State or LEA may not provide any funds to the charter school, however, until it actually opens. 34 CFR §76.794(a)(2).

A State or LEA is not required to delay a subgrant competition in order to allow a charter school that has not yet opened to compete for funds.

42. When are competitions held under the covered programs?

As a general rule, States are given broad discretion in developing application deadlines and procedures under these programs. Therefore, administration and implementation of each grant program will vary from State to State. Variations in the timing and amounts of Congressional appropriations also will affect program continuity and funding levels, which, in turn, may alter

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the timing of program competitions. 34 CFR §76.794(a).

D. PROGRAMS IN WHICH STATES AWARD SUBGRANTS ON A DISCRETIONARY, BUT NONCOMPETITIVE, BASIS

This section of the guidance addresses issues related to discretionary programs in which the State awards subgrants on a noncompetitive basis. Examples of these types of programs are Migrant Education and Neglected and Delinquent Children. Under both of these programs, the State has discretion either to provide services directly, or to award funds to subgrantees on a competitive or noncompetitive basis. Moreover, a number of programs, such as Part B of IDEA and Safe and Drug-Free Schools, require the State to allocate a majority of funds on a formula basis, but also allow a portion of funds to be distributed on a discretionary basis.

43. Are States and LEAs required to comply with the final regulations when awarding subgrants on a noncompetitive basis? How does a State allocate funds to new or expanding charter schools under a discretionary covered program in which subgrants are *not* awarded through a competition?

The final regulations do not apply to programs, or portions of programs, under which the State or LEA does not award subgrants by formula or through a competition. Under the Migrant Education and Neglected and Delinquent Children programs, for example, States have discretion either to provide services directly or to award funds to subgrantees on a competitive or noncompetitive basis. Unless the State elects to award subgrants through a competition, the State is not required to comply with the final regulations when distributing funds under these

The final regulations do not apply to programs, or portions of programs, in which subgrants are awarded on a discretionary, but noncompetitive, basis.

programs. Similarly, a number of programs, such as Part B of IDEA and Safe and Drug-Free Schools, require States to allocate a majority of funds on a formula basis, but also allow a portion of funds to be distributed on a discretionary basis. For these programs, the State or LEA would not be required to comply with the final regulations when distributing the discretionary portion of the funds on a noncompetitive basis. If the State or LEA distributes the discretionary portion of the funds on a competitive basis, then the final regulations would apply, and new or expanding charter schools would have to be given a full and fair opportunity to apply. While the final regulations are not intended to restrict the discretionary authority of States or LEAs, the Department encourages States and LEAs to consider charter schools on an equitable basis with other LEAs and public schools when providing funds on a discretionary, but noncompetitive, basis. 34 CFR §§76.787 and 76.794 (b).

44. Are States and LEAs required to comply with the final regulations when providing services to new or expanding charter schools under these programs?

No. The final regulations do not apply to the provision of services by States or LEAs under these programs. Thus, if a State elects to provide services to eligible LEAs and public schools, including new or expanding charter schools, the provision of those services would not be governed by the requirements in the final regulations. When providing services on a discretionary, but noncompetitive, basis, however, States and LEAs are encouraged to consider charter schools on an equitable basis with other LEAs and public schools. 34 CFR §76.785.

**E. TITLE I, PART A OF THE ELEMENTARY
AND SECONDARY EDUCATION ACT**

This section of the guidance addresses issues concerning the eligibility of charter schools to receive Title I funds, and the allocation of those funds to new and expanding charter schools. Title I provides Federal financial assistance, through SEAs, to LEAs to meet the educational needs of children who are failing, or most at risk of failing, to meet a State's challenging content and student performance standards in schools with high concentrations of children from low-income families. New or expanding charter schools may be eligible to receive Title I funds as LEAs or as participating public schools within an LEA.

In general, when allocating Title I funds, SEAs and LEAs must treat charter schools in a manner consistent with the Title I statute and regulations, and ensure that charter schools receive the proportionate allocations for which they are eligible. In a State that considers charter schools to be LEAs, the SEA must treat those charter schools like other LEAs in the State when determining Title I LEA eligibility and allocations. Similarly, if a State considers charter schools to be public schools within an LEA, the LEA must treat its charter schools like other public schools in determining Title I eligibility and making within-district allocations.

**E-1. ALLOCATING TITLE I FUNDS TO NEW
OR EXPANDING CHARTER SCHOOL LEAS**

45. What eligibility requirements must a charter school LEA meet in order to receive Title I funds?

In order to receive Title I funding, a charter school LEA generally must meet the same eligibility requirements that apply to other LEAs in the State, except that an SEA may not determine a charter school LEA's eligibility to receive Title I funds based on data from a prior year (see

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Q&A No. 17). To be eligible for a Basic Grant, an LEA must have at least 10 *formula children* and the number of such children must exceed two percent of the LEA's population ages 5 through 17 years. To be eligible for a Concentration Grant, an LEA generally must have more than 6,500 formula children, or the number of such children must exceed 15 percent of the LEA's population ages 5 through 17. Formula children are defined in Q&A No. 46.

In order to receive Title I funds, new and expanding charter schools must meet the same eligibility and other program requirements that apply to other LEAs and public schools, except that the eligibility of a new or expanding charter school to receive Title I funds may not be based on data from a prior year.

46. In general, how does the Department determine LEA allocations under Title I?

Beginning in school year (SY) 1999-2000, the Department allocates funds to eligible LEAs through SEAs based on the number of children counted in the Title I formula and each State's per-pupil expenditure. *Formula children* are children ages 5 through 17 from low-income families, as estimated by the U.S. Census Bureau (Census) every two years, and annual counts of similarly aged children in locally operated institutions for neglected children, foster homes, and in families above poverty receiving Temporary Assistance for Needy Families (TANF).

47. What role does the SEA play in the Title I allocation process?

ED's LEA allocations for SY 2000-01 reflect the list of LEAs that existed on maps provided to the Census by each State for SY 1995-96. As a result, the LEAs on ED's allocation list may not match the SY 2000-2001 universe of LEAs for many States. Therefore, SEAs in those States must adjust ED-determined allocations to account for LEA boundary changes and special LEAs, such as charter schools, that have been created since SY 1995-96 and are eligible for Title I. Even though ED determines Title I allocations for most LEAs, the SEA will always play a role in the allocation process because of the need to adjust for LEA changes taking place between the period when the data were collected and the time they are actually used.

In addition to these adjustments, sections 1124(a)(2) and 1124A(a)(4) of Title I permit an SEA to combine the ED-determined allocations for LEAs that serve an area of fewer than 20,000 total residents (small LEAs). Using an alternative method approved by ED, the SEA may redetermine eligibility for Basic and Concentration Grants for its small LEAs and redistribute the combined total of funds allocated for those LEAs. For this purpose, charter school LEAs are considered to be *small LEAs*. An SEA is not permitted to include the allocations of LEAs that serve an area with a total population of 20,000 or more in this redistribution. Allocations for these *large LEAs* generally will be the allocations ED has determined, subject to adjustments needed to account for

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eligible LEAs not on the Census list and to reserve funds for State administration and school improvement.

For more details on the SEA's role in the Title I allocation process, see the Department's June 1999 policy guidance entitled, "School Year 1999-2000 State Educational Agency Procedures for Adjusting Basic and Concentration Grant Allocations Determined by the U.S. Department of Education" (hereinafter referred to as "June 1999 Guidance") at <http://www.ed.gov/offices/OESE/CEP/pdfseastepsbasic.pdf>. This guidance also applies to SY 2000-2001 Title I allocations.

48. What information must a new or expanding charter school LEA provide to its SEA in order to receive Title I funds?

In order for the SEA to determine a charter school LEA's Title I eligibility and allocation, a charter school LEA must provide the SEA with data on the following:

- (a) The number of children ages 5 through 17 enrolled in the charter school and the LEA(s) in which they reside; and
- (b) The number of children ages 5 through 17 from low-income families and the LEA(s) in which they reside.

49. How does the SEA obtain a count of formula children to determine whether a new or expanding charter school LEA is eligible to receive Title I funds?

For each LEA not on the Census list that is a charter school LEA opening for the first time or significantly expanding its enrollment, the SEA must obtain from the charter school LEA a count of formula children and children ages 5 through 17, and subtract these children from each sending LEA (this process would also apply to other types of special LEAs such as regional vocational/technical schools). Because Census poverty data are not available for charter school LEAs, the SEA must derive an estimate of Census poor children and children ages 5 through 17 for each charter school LEA and determine the LEAs from which these children came. In deriving a Census poverty count, the SEA may use an alternate poverty data source, such as free and reduced-price lunches, as long as these alternative data are available for both the sending and new or expanding charter school LEAs. If alternative poverty data for the new or expanding charter school LEA are not available at the same time that such data are available for the sending LEA, an SEA may use the same data collected at a different time of the year.

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Because Census poverty data are not available for new and expanding charter schools, under the final regulations, SEAs may determine the Title I eligibility of new and expanding charter school LEAs by deriving an estimate of the number of Census poor children ages 5 through 17 attending the charter school.

An SEA would follow the procedures outlined below to derive a formula count and to determine the eligibility of a new or expanding charter school LEA to receive Title I funds.

- (a) For each charter school LEA opening for the first time or significantly expanding its enrollment:
 - (1) The charter school LEA reports to the SEA its total 5 through 17 population and identifies the LEAs from which those children came;
 - (2) The charter school LEA reports to the SEA a count of low-income children, using alternative poverty data that is from the same time period as the count of the charter school LEA's 5 through 17 population and identifies the LEAs from which those children came;
 - (3) The SEA uses the total 5 through 17 population and the number of low-income children in the charter school LEA to derive an estimate of Census poverty children in each charter school LEA;
 - (4) The SEA adds any other formula children reported as enrolled in the charter school LEA to determine the total formula children in the charter school LEA; and
 - (5) The SEA calculates the percentage of formula children in the charter school LEA to determine eligibility for Title I.
- (b) For each sending LEA:
 - (1) The SEA reduces the total ages 5 through 17 population by the number transferring to the new or expanding charter school LEA;
 - (2) The SEA reduces the number of Census poverty children in each sending LEA by the derived estimate of Census poverty children who transferred from that LEA to the new or expanding charter school LEA (determined in Step (a) above);

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- (3) The SEA adds any other formula children that continue to reside in the sending LEA to determine a revised total of formula children in the sending LEA; and
- (4) The SEA recalculates the percentage of formula children in the sending LEA.

The results from the above steps determine a count of formula children and the number of children ages 5 through 17 needed to determine Title I Basic and Concentration Grant eligibility for each charter school LEA opening for the first time or significantly expanding its enrollment, and each affected sending LEA.

For specific examples of how the SEA carries out this determination for new or expanding charter school LEAs that draw their children from a single sending LEA, and for new or expanding charter school LEAs that draw children from several sending LEAs, see Examples 1, 2, 3, and 4 in Appendix C of this nonregulatory guidance.

50. How does an SEA adjust ED-determined allocations to ensure that charter school LEAs opening for the first time or significantly expanding their enrollment receive the Title I allocations for which they are eligible in accordance with the final regulations?

For each LEA that sends children to a charter school LEA that is opening for the first time or significantly expanding its enrollment, the SEA adjusts the ED-determined allocations as follows:

- (1) The SEA determines an amount per formula child for each sending LEA on the Census list contributing formula children to a charter school LEA not on the Census list by dividing the total allocation from ED by the total number of formula children in the sending LEA (using ED data);
- (2) The SEA reduces the ED allocation for each sending LEA on the Census list by an amount equal to the number of formula children transferring to charter school LEAs not on the Census list multiplied by the sending LEA's allocation per formula child determined above;
- (3) Any amounts for Basic Grants remaining in sending LEAs no longer eligible for Basic Grants revert to the SEA for distribution (see the Department's June 1999 guidance on procedures SEAs use in adjusting Title I LEA allocations determined by ED); and

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- (4) In light of the Fiscal Year (FY) 2000 Appropriations Act (Public Law No. 106-113), any amounts for a Concentration Grant remaining in a sending LEA that is no longer eligible for a Concentration Grant in SY 2000-01, but that received a Concentration Grant for SY 1999-2000, remain with the sending LEA.

For each new or expanding charter school LEA not on the Census list, the SEA determines the amount transferring from the sending LEAs as follows:

- (1) The amount transferring to each charter school LEA not on the Census list equals the sum of the allocations subtracted from each sending LEA contributing formula children to the receiving charter school LEA. That is, the amount a charter school LEA not on the Census list receives is the sum of the amounts that have followed the formula children from LEAs on the Census list;
- (2) Any amounts for Basic Grants transferring to charter school LEAs that are ineligible to receive Title I funds revert to the SEA for distribution (see the Department's June 1999 guidance on procedures SEAs use in adjusting Title I LEA allocations);
- (3) Any amounts for a Concentration Grant transferring to a charter school LEA that is ineligible in SY 2000-2001 for a Concentration Grant, and did not receive a Concentration Grant in SY 1999-2000, revert to the SEA for distribution; and
- (4) In light of the FY 2000 Appropriations Act, any amounts for a Concentration Grant transferring to a charter school LEA that is ineligible for a SY 2000-01 Concentration Grant, but that received a Concentration Grant for SY 1999-2000, transfer to the charter school LEA.

Once an SEA completes this process for its charter school LEAs and other types of special LEAs, it will have a list of all LEAs eligible for Basic and Concentration Grants as well as an initial allocation for each LEA for SY 2000-2001. An SEA would then follow the steps outlined in the Department's June 1999 Guidance

(<http://www.ed.gov/offices/OESE/CEP/pdfseastepsbasic.pdf>) to adjust for State administration and school improvement, ensure that each LEA receives its *hold-harmless adjustment*,³ and, where appropriate, adjust the allocations of its small LEAs.

³ Generally, the Title I statute contains a "hold-harmless" provision only for Basic Grants whereby an LEA is guaranteed a certain Title I allocation based on its prior year allocation. In the FY 2000 appropriations act, however, Congress established a 100 percent hold-harmless for Basic and Concentration Grant allocations made in school year 2000-01.

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For an illustration of how an SEA adjusts initial ED allocations to account for charter school LEAs, see Example 5 in Appendix C. For a detailed discussion of small LEA allocation procedures, see Steps 3, 4, and 5 in the Department's June 1999 Guidance.

51. What options does an SEA have to ensure that a charter school LEA that is opening for the first time or significantly expanding its enrollment receives the Title I funds for which it is eligible within the time periods specified in the final regulations?

Charter schools opening for the first time or significantly expanding their enrollment typically are not in a position to identify their formula children until on or near the date when the school actually opens or expands. To accommodate this situation without delaying the determination of final allocations for other LEAs in the State that are not affected by the creation or expansion of a charter school LEA, SEAs have several options:

- (a) Under the authority in section 1126(b) of Title I,⁴ an SEA may adjust the Title I allocations determined by ED for LEAs likely to send children to newly opening or expanding charter schools (*sending LEAs*) by reserving an estimated amount of funds in anticipation of the start-up or expansion of the charter school LEA. Once actual enrollment information and alternative poverty data are available on which to derive a Census poverty count for the charter school LEA and determine eligibility (see Examples 1-4 in Appendix C), the SEA would then determine actual allocations for eligible sending LEAs and charter school LEAs, and notify these LEAs of their final allocations later in the school year. These final allocations would then be used as the base for determining the hold-harmless allocations the following year. In determining final allocations that reflect actual data, an SEA may make adjustments to the sending LEA's allocation (i) out of its current year allocation; (ii) from funds carried over into the next year; or (iii) from its allocation determined in the following year;
- (b) In a variation of the first option, an SEA may reserve an estimated amount from the State's allocation as a whole in anticipation of the start-up of new or significantly

⁴ Section 1126(b) allows SEAs to allocate the amounts of grants under Sections 1124 (Basic Grants), 1124A (Concentration Grants), and 1125 (Targeted Grants) among affected LEAs (a) if two or more LEAs serve, in whole or in part, the same geographical area; (b) if an LEA provides free public education for children who reside in the school district of another LEA; or (c) to reflect the merger, creation, or change of boundaries of one or more LEAs.

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expanding charter school LEAs. However, once actual enrollment information and alternative poverty data are available on which to derive a Census poverty count for the charter school LEA and determine eligibility, an SEA must determine actual allocations for eligible sending LEAs and charter school LEAs, and notify these LEAs of their final allocations for the school year. In following this option, the SEA must ensure that final adjustments are made only from sending LEAs affected by the creation of newly eligible LEAs and that LEAs not contributing children to newly opening public charter schools receive their full allocation; or

- (c) An SEA may use funds made available through the reallocation process authorized in section 1126(c) of Title I, or from unexpended State administration funds, to provide estimated allocations to eligible charter school LEAs that are opening for the first time or significantly expanding their enrollment. Once poverty data for the charter school LEAs become available, an SEA would determine *actual* allocations that the sending LEAs and the charter school LEAs are entitled to receive and notify the LEAs of what their *actual* allocation would have been for the school year through this process. These *actual* allocations would determine the amount of any adjustments the SEA would be required to make to the charter school LEA's allocation for that year, and would become the base allocation for determining hold-harmless allocations the following year.

52. What steps may an SEA follow if it does not have information to identify the specific school district(s) from which a new or expanding charter school LEA has drawn its children?

The guidance in Q&A Nos. 50 and 51 is based on the assumption that the SEA can identify the specific LEA(s) from which a new or expanding charter school LEA draws its students. If an SEA does not have information on the sending LEA for each child enrolled in a charter school LEA, the SEA may use the alternative method described below (this method is approved for SY 2000-01).

Under this special procedure, the SEA first determines the number of formula children in each new or expanding charter school LEA and the charter school LEA's eligibility for Basic and Concentration Grants. Then, the SEA determines an allocation for each charter school LEA.

- (a) To determine the number of formula children and eligibility for each charter school LEA (see Example 6 in Appendix C):
 - (1) The SEA identifies an alternative poverty factor (e.g., free and reduce-priced lunch) available in total for the State and for each charter school LEA.

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- (2) The SEA develops an equating factor for the State that represents the following proportion:

$$\frac{\text{Total number of Census poor children in the State}}{\text{Total number of poor children in the State using the alternative poverty factor}}$$

- (3) The SEA multiplies the equating factor times the number of poor children based on the alternative poverty factor reported by the charter school LEAs to obtain an estimate of Census poor children in the charter school LEAs.
- (4) The SEA determines the total number of formula children in each charter school LEA by adding together the estimated Census poor children and all other formula children enrolled in the charter school LEA.
- (5) The SEA uses the total number of formula children and the reported enrollment ages 5 through 17 in each charter school LEA to calculate the percentage of formula children in all charter school LEAs in the State (**NOTE:** in this method, the number and percentage of Census formula children in the other LEAs in the State are unchanged).
- (6) The SEA determines Basic and Concentration Grant eligibility for each charter school LEA.
- (b) To determine Basic Grant allocations for charter school LEAs that are opening for the first time or significantly expanding their enrollment (see Example 7 in Appendix C):
- (1) The SEA divides the number of formula children in all eligible charter school LEAs by the total number of formula children in the State to determine the percentage of the State's total formula children enrolled in all charter school LEAs.

$$\frac{\text{Total formula children in all eligible charter school LEAs}}{\text{Total formula children in all eligible LEAs in the State}}$$

- (2) The SEA reduces the allocation to all LEAs on the Census list by the percentage just determined. The total amount taken from the eligible LEAs on the Census list becomes the amount reserved to make initial Basic Grant allocations to the charter school LEAs.

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- (3) The SEA determines the allocation for each eligible charter school LEA by multiplying the total amount reserved by the proportion of formula children enrolled in all charter school LEAs in the State.

In Example 7 in Appendix C, the SEA first divides the formula count in charter school LEA 1 by the total count for all eligible charter school LEAs to determine charter school LEA 1's share of formula children. The SEA multiplies that share by the total amount reserved to determine charter school LEA 1's Basic Grant allocation. The SEA repeats this process for charter school LEA 2.

- (c) To determine Concentration Grant allocations for new or expanding charter school LEAs taking into account the special hold-harmless provisions in the FY 2000 Appropriations Act (see Example 8 in Appendix C):

- (1) The SEA creates a list of all LEAs eligible to receive a Concentration Grant in SY 2000-2001 and all LEAs ineligible for a Concentration Grant in SY 2000-2001 that received a Concentration Grant in SY 1999-2000. The list includes LEAs on the Census list, new LEAs, and charter school LEAs.
- (2) The SEA divides the number of formula children in all charter school LEAs on the list just created by the total number of formula children in all LEAs on that list to determine the percentage of the State's total formula children enrolled in all charter school LEAs.

$$\frac{\text{Total formula children in all charter school LEAs}}{\text{Total formula children in all LEAs}}$$

- (3) The SEA reduces the allocation to all LEAs on the Census list by the percentage just determined. The total amount taken from the LEAs on the Census list becomes the amount reserved to make initial Concentration Grant allocations to the charter school LEAs.

The SEA determines the Concentration Grant allocation for each charter school LEA by multiplying the total amount reserved by the proportion of the formula children enrolled in all charter school LEAs in the State.

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E-2. ALLOCATING TITLE I FUNDS TO NEW OR EXPANDING CHARTER SCHOOLS THAT ARE PUBLIC SCHOOLS WITHIN AN LEA

53. What eligibility requirements must a charter school that is opening for the first time or significantly expanding its enrollment meet in order to receive Title I funds from its LEA?

In order to receive Title I funds, a new or expanding charter school that is a public school within an LEA must meet the same eligibility requirements as other public schools in the LEA. To allocate Title I funds to schools, an LEA must first determine which schools (including charter schools) are eligible to participate. Generally, a school is eligible to participate in the Title I program if the percentage of children from low-income families residing in the school's attendance area or enrolled in the school is at least as high as the percentage of children from low-income families in the LEA as a whole, or is at least 35 percent.

54. In general, how does an LEA distribute Title I funds to eligible schools within the LEA?

An LEA ranks all of its schools according to their percentages of poverty and allocates funds to eligible schools, in rank order according to those poverty percentages, based on the number of poor children in each school. In allocating Title I funds, an LEA must serve all schools above 75 percent poverty before serving any school with a poverty rate below 75 percent. After allocating funds to schools above 75 percent poverty, the LEA may serve lower-poverty schools either by continuing with the districtwide ranking or by ranking within grade-span groupings. Although an LEA is not required to allocate the same per-pupil amount to each school in its district, it may not allocate a higher amount per child to schools with lower poverty rates than to schools with higher poverty rates. Depending on choices an LEA makes with regard to such issues as the per-pupil allocation for each school, grade-span groupings, and off-the-top reservations, as well as the amount of Title I funds an LEA receives, an eligible school may or may not receive Title I funding.

For more details about how LEAs allocate Title I funds to schools, see the Title I regulations at 34 C.F.R. §§ 200.27-200.28; see also Title I, Part A Policy Guidance, April 1996 (Local Educational Agency Identification and Selection of School Attendance Areas and Allocation of Title I Funds) at http://www.ed.gov/legislation/ESEA/Title_I/basic toc.html.

55. Does an LEA have flexibility in obtaining poverty data for charter schools that are opening for the first time or significantly expanding their enrollment?

Yes. The following are examples of how an LEA may exercise flexibility in obtaining poverty data for new or expanding charter schools:

- (a) If enrollment and poverty data for a new or expanding charter school are not available at the same time that such data are collected for other public schools within the LEA (e.g., the charter school has not yet opened or expanded), an LEA may use the same data collected at a different time of the year to determine the charter school's eligibility for, and allocation of, Title I funds. For example, an LEA that uses enrollment and free-lunch data collected in February 1999 to determine allocations for the 2000-2001 school year may use charter school data collected at a later date to determine the public charter school's Title I eligibility and allocation.
- (b) If an LEA uses poverty data that are not available for a charter school, such as free and reduced-price lunch data, the LEA has several options:
 - (1) The LEA may use poverty data for children attending a new or expanding charter school that are from a different source than the data it uses for other public schools within the LEA, so long as the income level for both sources is generally the same. For example, charter school officials may be able to produce an equivalent count of children eligible for free and reduced-price lunches using sources of poverty data other than free and reduced-price lunch data, such as a survey of parents, State programs under Title IV of the Social Security Act, or tuition scholarship programs;
 - (2) If complete actual data are not available, the LEA may extrapolate the number of low-income children in a new or expanding charter school from actual data on a representative sample of children in the charter school. The sample size should be large enough to draw a reasonable conclusion that the poverty estimate is accurate; or
 - (3) The LEA may obtain the number of poor children in a new or expanding charter school by correlating sources of data -- that is, by determining the proportional relationship between two sources of data on poor children in regular public schools and applying that ratio to a known source of data on poor children in a charter school.

56. What if enrollment and poverty data for a charter school that is opening for the first time or significantly expanding its enrollment are not available in time to be factored into the LEA's allocation process?

Newly opening or expanding charter schools typically are not in a position to identify their poverty children until on or near the date when the school actually opens or expands. To accommodate this situation and ensure that charter schools receive the proportionate amount of Title I funds for which they are eligible within the time periods specified in the final regulations, the LEA has several options:

- (a) The LEA may reserve an amount off the top of its Title I allocation that it believes will be sufficient to fund eligible charter schools that are opening for the first time or significantly expanding their enrollment. Once a charter school has opened or expanded, and the actual data is available, the LEA would determine whether the charter school is eligible and ranks sufficiently high to receive Title I funds. The LEA would allocate the appropriate amount of the reserved Title I funds to the qualifying charter school in accordance with the LEA's Title I allocation procedures;
- (b) The LEA may distribute an appropriate amount available from Title I *carryover funds* to a charter school that is opening for the first time or significantly expanding its enrollment; or
- (c) The LEA may apply to the SEA for funds available through the Title I reallocation process to serve a charter school that is opening for the first time or significantly expanding its enrollment.

F. PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

This section of the guidance addresses the general requirements of Part B of IDEA and the applicability of the final regulations to the allocation of Part B funds to new and expanding charter schools. It is essential that States receiving Part B funds ensure that children with disabilities who attend charter schools and are eligible for Part B services receive a free appropriate public education (FAPE), and that the rights and protections of Part B are afforded to eligible students and their parents. Accordingly, this section of the guidance is also intended to assist charter school operators and developers in educating students with disabilities by providing them with as much useful information as possible about the requirements of Part B and the steps they need to take to access Part B funds.

F-1. GENERAL REQUIREMENTS UNDER PART B OF IDEA

57. What are the general responsibilities of charter schools to disabled students?

As public schools, charter schools are subject to Part B of IDEA and Federal civil rights laws prohibiting discrimination on the basis of disability. As is true for students with disabilities attending traditional public schools in the State, or who are publicly-placed at private schools as a means of providing special education and related services, students with disabilities attending charter schools and their parents retain all rights under Part B of IDEA. 34 CFR §300.312(a); see also 34 CFR §300.401(c).

For additional information on nondiscrimination on the basis of disability under Federal civil rights laws, see “Applying Federal Civil Rights Laws to Public Charter Schools: Questions and Answers” (May 2000), issued by the Department’s Office for Civil Rights, at http://www.uscharterschools.org/pub/uscs_docs/fr/civil_rights_sub.htm

58. What is Part B of IDEA?

Part B of IDEA (codified at 20 U.S.C. §§1401, 1411-1419) consists of two formula grant programs -- Grants to States and Preschool Grants -- that provide financial assistance to States and, through them, to LEAs, educational service agencies (ESAs), and some State agencies to assist in providing FAPE to children with disabilities. With some exceptions, Part B funds must be used in meeting the excess costs of providing special education and related services to children with disabilities.

For a summary of Part B of IDEA, including basic eligibility and other program requirements, see Program Summaries, attached to this nonregulatory guidance as Appendix B.

59. Are charter school LEAs eligible to receive subgrants under Part B of IDEA?

Yes. LEAs that meet the Part B definition at 34 CFR §300.18, including charter schools that are established as LEAs under State law, and meet the eligibility criteria in section 613 of IDEA are eligible to receive subgrants under the Grants to States and Preschool Grants programs authorized under Part B of IDEA. 20 U.S.C. §§1411(g) and 1419(g)(1); 34 CFR §§76.787, 300.711, and 301.30.

60. Is every charter school an LEA?

No. The Part B regulation at 34 CFR §300.18 defines the term *local educational agency* to include a charter school that is established as an LEA under State law. This definition of LEA is applicable to both funding authorities under Part B and, therefore, a charter school that is treated as an LEA under the Grants to States program must also be treated as an LEA for purposes of the Preschool Grants program. Whether a charter school is constituted as an independent LEA, a public school within an LEA, or some other entity is dependent on applicable State law. 34 CFR §§76.787 and 300.18(a)-(b); see also Q&A No. 23.

61. What eligibility requirements must a charter school LEA meet in order to receive funds under Part B of IDEA?

In order to be eligible for assistance from its SEA, a charter school LEA must meet the eligibility requirements in section 613 of IDEA. Among other things, the charter school LEA must have in effect policies, procedures, and programs that are consistent with the policies and procedures the State has to meet in order to establish its eligibility for Part B grant awards. Specifically, the charter school LEA must establish policies and procedures related to child find and conducting individual evaluations, placement of children in the least restrictive environment, and development and implementation of individualized education programs. 34 CFR §§76.788(c) and 300.220.

Other conditions relate to use of Part B funds in accordance with applicable provisions of Part B only to pay the excess costs of providing special education and related services to children with disabilities; and to supplement, and not supplant, State, local, and other Federal funds. In addition, except under certain limited circumstances, funds awarded to LEAs under Part B may not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year. 20 U.S.C. §1413(a)(2)(A).

62. What information must a new or expanding charter school LEA provide to its SEA in order to receive funds under Part B of IDEA?

In order to receive funds under Part B of IDEA, a new or expanding charter school LEA must have on file with the SEA the policies and procedures described in Q&A No. 61 above. In addition, the new or expanding charter school LEA must provide the SEA with the information the SEA needs to allocate Part B funds to the charter school LEA. Specifically, the SEA will need to know the number of children with disabilities provided special education by the charter school LEA, the total number of children enrolled in the charter school LEA, and the number of

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children living in poverty as determined by the SEA. 34 CFR §§300.220-300.250; see also 34 CFR 76.788; Q&A Nos. 9-13.

63. How does Part B of IDEA and its implementing regulations address the obligations of charter schools, in light of their status under State law?

Part B of IDEA and its implementing regulations at 34 CFR Part 300 clarify the status of charter schools and the obligations of SEAs and LEAs with respect to charter schools. Under IDEA, charter schools can be considered as:

- (a) LEAs that are eligible for subgrants under §§300.711-300.714 of the Part B regulations if they are established as LEAs under State law and meet the Part B definition of the term *local educational agency* at 34 CFR §300.18 of the Part B regulations;
- (b) ESAs, as defined at 34 CFR §300.10 of the Part B regulations;
- (c) Public schools within an LEA or ESA; or
- (d) An entity that is not an LEA or ESA or a public school within an LEA or ESA.

64. Under what circumstances may an SEA require a charter school LEA to establish its eligibility jointly with another LEA?

The IDEA Amendments of 1997 provide that an SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA would be ineligible because the LEA would not be able to establish and maintain programs of sufficient size and scope to meet the needs of children with disabilities effectively. However, IDEA also states that an SEA may not require a charter school that is an LEA to establish joint eligibility for this reason unless it is explicitly permitted to do so under the State's charter school statute. 20 U.S.C. §1413(e)(1); 34 CFR §300.190(a)-(b).

65. Are representatives of charter schools required members of the State advisory panel on the education of children with disabilities?

Yes. The membership of the advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make these appointments, that is representative of the State population and that is composed of individuals representative of a broad range of constituencies involved in, or concerned with, the education of children with disabilities. Among the representatives identified in IDEA and its regulations are representatives

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of private schools and charter schools. 20 U.S.C. §1412(a)(21)(B)(viii); 34 CFR §300.651(a)(8). The advisory panel, among other functions, advises the SEA of unmet needs within the State on the education of children with disabilities. 20 U.S.C. §1412(a)(21)(D)(i); 34 CFR §300.652(a)(1).

66. Which entities are responsible for ensuring that the requirements of Part B are met for children with disabilities attending charter schools and their parents?

The Part B regulations that implement statutory changes made by the IDEA Amendments of 1997 provide that children with disabilities attending charter schools and their parents retain all rights under Part B of IDEA. 34 CFR §300.312(a). Thus, to ensure that responsibilities for the education of students with disabilities attending charter schools are appropriately met, the Part B regulations clarify which entity is responsible for ensuring that the requirements of Part B are met and also provide States with flexibility in assigning those responsibilities.

If the charter school meets the Part B definition of *local educational agency* at 34 CFR §300.18, and receives Part B funds from the SEA under §§300.711-300.714, the Part B regulations specify that the charter school LEA is responsible for ensuring that the requirements of Part B are met, unless State law assigns that responsibility to some other entity. 34 CFR §300.312(b). If the charter school is a public school within an LEA that receives funding under §§300.711-300.714 and includes other public schools, the regulations provide that the LEA of which the charter school is a part is responsible for ensuring that the requirements of Part B of IDEA are met, unless State law assigns that responsibility to some other entity. 34 CFR §300.312(c)(1).

If the charter school is not an LEA or a public school within an LEA, the Part B regulations provide that the SEA is responsible for ensuring that the requirements of Part B of IDEA are met. 34 CFR §300.312(d)(1). In this circumstance, however, States are not precluded from assigning initial responsibility for ensuring that the requirements of Part B are met to another entity, provided that the SEA maintains ultimate responsibility for ensuring compliance with the requirements of Part B. 34 CFR §300.312(d)(1)-(2); see also 34 CFR §300.600.

67. Do children with disabilities who attend a charter school that does not receive Part B funds from the SEA retain their rights under Part B of IDEA?

Yes. Children with disabilities attending charter schools and their parents retain all rights under Part B of IDEA. 34 CFR §300.312(a). Even if the charter school receives no Part B funds, children with disabilities attending the charter school

Children with disabilities who attend charter schools that do not receive Part B funds retain their rights to FAPE in accordance with Part B of IDEA and Federal civil rights laws.

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retain their right to FAPE under Part B of IDEA. This is consistent with each SEA's overarching responsibility to exercise general supervision over all educational programs for children with disabilities in the State, and to ensure the availability of FAPE for all disabled children residing in the State in mandatory age ranges. These requirements apply regardless of whether the charter school is an LEA, a public school within an LEA, or neither an LEA nor a public school within an LEA.

F-2. GRANTS TO STATES PROGRAM

68. How are Part B funds allocated to States under the Grants to States program?

Each SEA receives a base allocation consisting of the amount of Grants to States funds that the SEA received in FFY 1999. Eighty-five percent of any remaining funds are allocated to States based on the relative populations of children ages 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of IDEA. Fifteen percent of any remaining funds are allocated to States based on the relative numbers of children in the general population who are living in poverty in each State that fall within the age range for which the State ensures the availability of FAPE for children with disabilities. This formula contains numerous provisions for situations in which the appropriation for the program remains constant, increases, or decreases, and several maximum and minimum funding limitations. 20 U.S.C. §1411(e); 34 CFR §§300.706-300.709.

69. How do SEAs make subgrants to LEAs, including charter school LEAs, under the Grants to States program?

Most funds awarded to SEAs must be passed through on a formula basis to LEAs, including charter school LEAs, that have established their eligibility under section 613 of Part B of IDEA. 20 U.S.C. §1411(g)(1); 34 CFR §300.711.

Each LEA receives a base allocation consisting of the amount of Grants to States funds that the LEA would have received in FFY 1999 had the SEA distributed 75 percent of its funds to LEAs. Eighty-five percent of any remaining funds are distributed based on the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction. Fifteen percent of any remaining funds are distributed to LEAs based on their relative numbers of children living in poverty, as determined by the SEA. 20 U.S.C. §1411(g)(2)(B); 34 CFR §300.712.

70. What Part B funds under the Grants to States program are not passed through to LEAs by formula? How do States use those funds?

Most Part B funds provided to States under the Grants to States program must be passed on to LEAs. However, a portion of the funds may be used for State-level activities such as administration, monitoring, mediation, direct and support services, developing plans for the State improvement programs, and helping LEAs address personnel shortages. The maximum amount of funds that can be retained by a State for State-level activities is an amount equal to 25 percent of the amount it received for fiscal year 1997 under the Grants to States program adjusted upward each year by the lesser of the percentage increase, if any, in the State's allocation or the rate of inflation. 20 U.S.C. §1411(f)(1)(A)-(B); 34 CFR §300.602. The amount used for administration is limited to the greater of 20 percent of the amount available to a State for State-level activities or \$500,000, as adjusted for inflation since fiscal year 1998. 20 U.S.C. §1411(f)(2); 34 CFR §300.620.

Funds that are not used for State-level activities must be passed through to LEAs either by the mandatory formula described in Q&A No. 69 or as special subgrants for capacity building and improvement (*i.e.*, *sliver grants*). 20 U.S.C. §1411(f)(4); 34 CFR §300.622-300.624. Sliver grant funds are intended to assist LEAs in providing direct services and in making systemic change to improve results for children with disabilities through activities that may include direct services to children in charter schools. A State must provide its LEAs with special subgrants for capacity building when the percentage increase in the State's allocation exceeds the rate of inflation, and the amount of required funding for these grants in the State is \$100,000 or greater. The amount required for these subgrants is equal to the maximum amount that the State was authorized to retain for State-level activities in the prior year, multiplied by the difference between the percentage increase in the State's allocation and the rate of inflation. 34 CFR §300.623. The State has discretion in making these awards to LEAs and may establish priorities in awarding these subgrants competitively or on a targeted basis. 34 CFR §300.624.

F-3. PRESCHOOL GRANTS PROGRAM

71. How are Part B funds allocated to States under the Preschool Grants program?

Each SEA receives a base allocation consisting of the amount of Part B funds that the State received under the Preschool Grants program in FFY 1997. Eighty-five percent of any remaining funds are distributed based on the relative numbers of children ages 3 through 5 in the general population in each State. Fifteen percent of any remaining funds are distributed based on the relative numbers of children ages 3 through 5 in the general population who are living in poverty in each State. 20 U.S.C. §1419(c)(2); 34 CFR §301.21(a). Like the formula under the

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Grants to States program, this formula also contains numerous provisions for situations in which the appropriation for the program remains constant, increases, or decreases, and several maximum and minimum funding limitations. 20 U.S.C. §1419(c); 34 CFR §§301.21-301.23.

72. How do SEAs make subgrants to LEAs, including charter school LEAs, under the Preschool Grants program?

Most funds awarded to SEAs must be passed through on a formula basis to LEAs, including charter school LEAs, that have established their eligibility under section 613 of Part B of IDEA. Each LEA, including charter school LEAs, receives a base allocation consisting of the amount of Preschool Grant funds the LEA would have received in FFY 1997 had the SEA distributed 75 percent of its funds to LEAs. Eighty-five percent of any remaining funds are distributed based on the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction. Fifteen percent of any remaining funds are distributed to LEAs based on their relative numbers of children living in poverty, as determined by the SEA. 20 U.S.C. §1419(g)(1); 34 CFR §301.31.

73. What Part B funds under the Preschool Grants program are not passed through to LEAs by formula? How do States use those funds?

Like the Grants to States program, States may retain funds under the Preschool Grants program for State-level activities up to an amount equal to 25 percent of the amount they received for FFY 1997, adjusted upward each year by the lesser of the percentage increase, if any, in the State's allocation or the rate of inflation. 20 U.S.C. §1419(d); 34 CFR §301.24. The amount used for administration is limited to not more than 20 percent of the maximum amount available to a State for State-level activities. 20 U.S.C. §1419(e)(1); 34 CFR §301.25(a). State-level activities include any of the following: (1) support services, including establishing and implementing a mediation process, which may benefit children with disabilities younger than 3 or older than 5, as long as those services also benefit children with disabilities ages 3 through 5; (2) direct services for children eligible under this program; (3) development of a State improvement plan; (4) activities to meet the performance goals established by the State and to support implementation of the State improvement plan; or (5) supplements to other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed 1 percent of the amount received by the State under this program for a fiscal year. Funds that are not available for State-level activities must be passed through to LEAs by the mandatory formula described in Q&A No. 72.

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F-4. ALLOCATING PART B FUNDS TO NEW OR EXPANDING CHARTER SCHOOL LEAs UNDER THE GRANTS TO STATES AND PRESCHOOL GRANTS PROGRAMS

74. How does an SEA determine allocations for new or expanded charter school LEAs under the permanent formula for the Grants to States and Preschool Grants programs?

Under the formula at sections 611(g)(2)(B) and 619(g)(1) of Part B of IDEA, the State allocation to each eligible LEA, including charter school LEAs, is the total of three amounts -- the base payment, the population payment, and the poverty payment.

For detailed discussions of how the base payment, population payment, and poverty payment are calculated, see Q&A Nos. 74-82.

75. How is the base payment calculated for an eligible charter school LEA under the Grants to States program?

The base payment is the amount the charter school LEA would have received under the Grants to States program for FFY 1999, if the State had distributed 75 percent of its grant for that year to its LEAs. This amount is based on the numbers of children with disabilities receiving special education and related services as of December 1, 1998 or, at the State's discretion, the last Friday in October 1998.

76. How is the base payment calculated for an eligible charter school LEA under the Preschool Grants program?

The base payment is the amount the charter school LEA would have received under the Preschool Grants program for FFY 1997, had the State distributed 75 percent of its grant for that year to its LEAs. This amount is based on the number of children with disabilities ages three through five receiving special education and related services as of December 1, 1996 or, at the State's discretion, the last Friday in October 1996.

77. What is the effect of setting the base payment under the Grants to States and Preschool Grants programs?

The amount of Part B funds that a State must use to make base payments to eligible entities under the Grants to States and Preschool Grants programs is set at 75 percent of the State's base

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year grant. The amount the State must use to make base payments remains the same for each subsequent fiscal year.

78. Do the implementing regulations for Part B of IDEA contain any provisions to ensure that newly-created charter school LEAs receive the funds for which they are eligible under the Preschool Grants and Grants to States programs?

Because the Department was aware that charter schools not in existence during the base year might be prevented from receiving a base payment under the Grants to States and Preschool Grants programs, the Department promulgated regulations for both programs that require States to make

base payment adjustments and provide part of the base payment to new or reconfigured LEAs, including charter school LEAs. Requiring base payment adjustments also ensures that available funds are distributed equitably among all LEAs in the State. See 63 Fed. Reg. at 29928 (June 1, 1998); see also 34 CFR §§301.31(b) (Preschool Grants) and 300.712(b)(2) (Grants to States).

In order to ensure that new and expanding charter school LEAs receive base payments under the Grants to States and Preschool Grants programs, States are required to make adjustments to the base payments of existing LEAs and to provide part of the base payment to new or reconfigured LEAs, including charter school LEAs.

79. Do the requirements for base payment adjustments apply to charter school LEAs that significantly expand their enrollment in a subsequent academic year?

Yes. Based on section 10306 of the ESEA, which was enacted after the IDEA Amendments of 1997, and the final regulations implementing section 10306, the requirements for base payment adjustments also apply to charter school LEAs that experience a *significant expansion in enrollment*, as defined at 34 CFR §76.787 of the final regulations. 34 CFR §§76.785-76.787; see also Q&A No. 6.

80. How are base payment adjustments made for new or expanding charter school LEAs under the Grants to States and Preschool Grants programs?

When calculating base payments for new or expanding charter school LEAs, States must use the method described in 34 CFR §§300.712(b)(2)(i) and 301.31(b)(1). This requires adjusting base allocations of affected LEAs based on the relative numbers of children with disabilities ages 3 through 21 for the Grants to State program, or ages 3 through 5 for the Preschool Grants program, currently provided special education by each affected LEA. Thus, if a charter school

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LEA opens for the first time or significantly expands its enrollment in a subsequent year, the State must divide the base allocation for LEAs that would have been responsible for serving children with disabilities now being served by the charter school LEA, among the charter school LEA and affected LEAs based on the relative numbers of children with disabilities currently provided special education by the affected LEAs.

81. What measures may an SEA take to assist LEAs whose base payments have been decreased as a result of base payment adjustments for new or expanding charter schools?

Once the base payments for affected LEAs and the charter school LEA are calculated using the method described above, the State may use its State set-aside funds to supplement funding for an LEA whose base payment is decreased as a result of having its base allocation divided. Supplements provided for this purpose, however, do not change the amount of the base payment the LEA is eligible to receive under either the Grants to States or Preschool Grants program, and the SEA is not required to continue to provide these supplemental funds in future years. See 34 CFR §§300.602 (Grants to States) and 301.24 (Preschool Grants).

82. How does an SEA calculate the population payment for a new or expanded charter school LEA under the formulas for the Grants to States and Preschool Grants programs?

The population payment (85 percent of the remaining flow-through funds after the base payments are made) is an amount based on the eligible agency's relative numbers of children enrolled in public and private elementary and secondary schools within the LEA's jurisdiction. The population payment should be allocated to new or expanded charter school LEAs based on the number of elementary and secondary school children enrolled in the charter school. Under section 76.791 of the final regulations, the State may not rely on enrollment data from a prior year in calculating the new or expanded charter school's population payment, even if population payments to other LEAs are based on a prior year's enrollment data. 34 CFR §76.791.

83. How does an SEA calculate the poverty payment for a new or expanded charter school LEA under the formula for the Grants to States and Preschool Grants programs?

The poverty payment (15 percent of the remaining flow through funds after the base payments are made) is an amount based on the eligible agency's relative numbers of children living in poverty, as determined by the SEA. The poverty factor chosen must be applied uniformly to all eligible subgrantees. For example, if the State uses aggregate data on children who are eligible

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for free or reduced-price meals under the United States Department of Agriculture's National School Lunch Program, this data must be applied to the new or expanded charter school LEA to determine its poverty payment. Under section 76.791 of the final regulations, the State may not rely on enrollment or eligibility data from a prior year in calculating the number of children living in poverty in a new or expanded charter school LEA, even if poverty payments to other LEAs are based on data from a prior year. 34 CFR §76.791.

84. In determining whether a charter school LEA has significantly expanded its enrollment, may a State consider only whether there has been a significant increase in the number of children with disabilities attending the charter school?

The definition of the term *significant expansion of enrollment* as set forth in the final regulations generally focuses on substantial increases in a charter school's overall enrollment without regard to student eligibility for funds under particular programs -- in this case, Part B of IDEA. Thus, when making a determination of whether an increase in a charter school's enrollment meets this definition, the State generally would consider the significance of the increase in overall enrollment at the charter school. However, because the final regulations give States unfettered discretion to determine any expansion of enrollment to be significant within the meaning of the final regulations, the State could, in its discretion, make a determination that a charter school has undergone a significant expansion of enrollment based on an increase in the number of children with disabilities attending the charter school.

For further discussion of significant expansion of enrollment, see Q&A No. 6.

85. Are SEAs required to comply with the final regulations when distributing State set-aside funds or subgrants to LEAs for capacity-building and improvement?

States are not required to comply with section 10306 of the ESEA or the final regulations when awarding subgrants on a discretionary, noncompetitive basis. The final regulations are not intended to restrict in any way the discretionary authority of SEAs with respect to these funds. Funds reserved for State-level activities (*i.e.*, State set-aside funds) and subgrants for capacity-building and improvement (*i.e.*, sliver grants) are discretionary and, generally, are not distributed on a competitive basis. Accordingly, in most cases, these funds are not subject to the requirements of section 10306 of the ESEA and the final regulations. However, SEAs are encouraged to consider charter school LEAs on the same basis as other LEAs when distributing these funds on

States are not required to comply with the final regulations when distributing State set-aside or sliver grant funds on a noncompetitive basis.

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a noncompetitive basis. If a State chooses to award these funds on a competitive basis (34 CFR §§300.370(c) and 300.624), the final regulations would apply and the State would be required to give eligible new or expanding charter schools a *full and fair opportunity* to apply for these funds. 34 CFR §§76.787 and 76.794; Q&A No. 38.

F-5. ALLOCATING PART B FUNDS TO NEW OR EXPANDING CHARTER SCHOOLS THAT ARE PUBLIC SCHOOLS WITHIN AN LEA

86. Are there requirements in Part B of IDEA that apply to LEAs that have charter schools that are public schools within the LEA?

Yes. For charter schools that are public schools within an LEA, Part B of IDEA and its implementing regulations require the LEA to provide information to the SEA demonstrating that the LEA will (a) serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools; and (b) provide Part B funds to those charter schools in the same manner as it provides Part B funds to its other schools. 20 U.S.C. §1413(a)(5); 34 CFR §300.241.

87. Are LEAs required to allocate Part B funds to eligible new or expanding charter schools that are public schools within an LEA? What if the LEA provides Part B funds to its other public schools?

There is nothing in section 10306 of the ESEA, the final regulations, or the IDEA Amendments of 1997 that would compel an LEA to provide Part B funds to charter schools that are public schools within the LEA if the LEA does not provide Part B funds to its other schools. Under section

An LEA is not required to provide Part B funds to a new or expanding charter school that is a public school within the LEA if the LEA does not provide Part B funds to other public schools within the LEA.

613(a)(5) of IDEA, however, if an LEA provides Part B funds or services to public schools within the LEA, the LEA must provide those funds or services in the same manner to charter schools that are public schools within the LEA. See 34 CFR §76.788(c) and 76.799.

88. Are LEAs required to comply with the final regulations when allocating Part B funds to new or expanding charter schools within the LEA?

Section 76.799 of the final regulations states that an LEA that provides funding to a charter school under a covered program must comply with the requirements of section 10306 of the ESEA and its implementing regulations on the same basis as SEAs are required to comply with section 10306 of the ESEA and its implementing regulations. There is no requirement in Part B

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that an LEA allocate Part B funds to its public schools based on a formula. However, if an LEA chooses to allocate Part B funds to its public schools on a formula basis, in accordance with §76.791 of the final regulations, the eligibility determination for the new or expanded charter school may not be based on enrollment or eligibility data from a prior year. In addition, funding allocations made on a formula basis must be made within the time periods specified in §76.793 of the final regulations (i.e., for charter schools opening or expanding by November 1st, within 5 months of the date the charter school opens for the first time or significantly expands its enrollment). 34 CFR §§76.791, 76.793, and 76.799.

89. May an LEA establish eligibility criteria when allocating Part B funds to charter schools that are public schools within the LEA?

An LEA may establish eligibility criteria when allocating Part B funds to charter schools within the LEA if the LEA allocates Part B funds to its other public schools based on eligibility criteria. Further, if the LEA has eligibility criteria that its public schools must meet in order to receive Part B funds, and the charter school meets those criteria, the LEA must provide Part B funds to the new or expanded charter school in the same manner that the LEA provides such funds to its other public schools. 34 CFR §§76.788(c), 76.789(b), and 76.799.

F-6. ALLOCATING PART B FUNDS TO NEW OR EXPANDING CHARTER SCHOOLS THAT ARE NEITHER LEAS NOR PUBLIC SCHOOLS WITHIN AN LEA

90. Under Part B of IDEA, are SEAs and LEAs required to provide Part B funds to new or expanding charter schools that are neither LEAs nor public schools within an LEA?

Although SEAs and LEAs *may* provide Part B State set-aside and capacity-building funds to charter schools that are neither LEAs nor public schools within an LEA for the provision of special education and related services, they are not required to do so. The only entities to which SEAs are required to award subgrants under Part B of IDEA are entities established as LEAs under State law and that meet the Part B definition of *local educational agency* at 34 CFR §300.18.

91. Are SEAs and LEAs required to comply with the final regulations when providing Part B funds to new or expanding charter schools that are neither LEAs nor public schools within an LEA?

SEAs and LEAs are completely exempt from the requirements of the final regulations when allocating Part B funds on a discretionary and noncompetitive basis. Because SEAs and LEAs

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are not required to provide Part B funds to charter schools that are neither LEAs nor public schools within an LEA, and do so only at their discretion and, generally, on a noncompetitive basis, SEAs and LEAs are not required to comply with the requirements of the final regulations when awarding Part B subgrants to new or expanding charter schools that fall into this category. If, however, a State chooses to award funds to these charter schools on a competitive basis, the final regulations would apply and the State would be required to give new and expanding charter schools that fall within this category a *full and fair opportunity* to compete for funds. 34 CFR §76.794(a). Moreover, the Department encourages SEAs and LEAs to consider new and expanding charter schools on the same basis as other, similarly-situated eligible entities when providing funds on a discretionary, but noncompetitive, basis. 34 CFR §§76.787 and 76.794.